SUMMARY of COOPERATIVE CASES

FARMER COOPERATIVE SERVICE
U. S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C.

LEGAL SERIES NO. 3

DECEMBER 1957

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMER COOPERATIVE SERVICE
WASHINGTON, D.C.

SUMMARY OF COOPERATIVE CASES

*

* *

Prepared by

RAYMOND J. MISCHLER, *Attorney*
OFFICE OF THE GENERAL COUNSEL, U.S.D.A.

LEGAL SERIES NO. 3

DECEMBER 1957

TABLE OF CONTENTS

The comments on cases reviewed herein represent the personal opinion of the author and not necessarily the official views of the Department of Agriculture.

SPECIAL NOTICE

Cumulative Index for the calendar year 1957 is included at the end of this issue, following page 39. Table of Cases Reported is also included.

PATRONAGE REFUND CREDIT HELD NOT CURRENTLY TAXABLE TO ACCRUAL BASIS PATRON

(Long Poultry Farms, Inc. v. Commissioner, 4th Cir., ___ F. 2d ___, 26 L.W. 2257 (1957))

The United States Court of Appeals, 4th Circuit, in a strongly worded rejection of the receipt and reinvestment theory as applied to mere book credits, reversed the Tax Court's holding in Long Poultry Farms, Inc., 27 T.C. 985. (See Summary L.S. No. 1, p. 1 (1957).) It held in a decision released on November 8, 1957, that on the facts involved the taxpayer did not receive income as a result of the credit allocated, nor did it become entitled to receive anything which could properly be accrued as income.

Excerpts from the decision follow:

> "This is a petition to review a decision of the Tax Court holding that a taxpayer on the accrual basis must report as taxable income a patronage refund credit allotted to it by an agricultural cooperative association. The taxpayer is the Long Poultry Farms, Inc., a poultry raiser of Newmarket, Virginia, which had been selling poultry to Rockingham Poultry Market, Inc., of Broadway, Virginia, in which taxpayer held eight shares of preferred stock. On April 1, 1953, the cooperative allotted a patronage credit of $6,781.94 to taxpayer; and the question in the case is whether taxpayer, a corporation making its returns on the accrual basis, must account for this item as income for the fiscal year in which the allotment was made. The cooperative was an association exempt from taxation under the provisions of section 101(12) of the Internal Revenue Code of 1939. The general plan under which it operated is thus described by the Tax Court:
>
> > "'The general plan under which Rockingham operated was to provide centralized marketing facilities for its members and patrons, and at the end of each year to allocate to the members and patrons their proportionate share of the Cooperative's earnings. In order for it to maintain a revolving capital fund for its operation, the bylaws of the Cooperative provided that its members and patrons would currently furnish money for its capital through their patronage. The Cooperative, at the discretion of

its directors, might retain all patronage refund credits, allocated to its members, for its use for so long as it wished. If the Cooperative, sustained a loss in any year, the directors were authorized to reduce capital contributions or previous patronage refund credits on a proportionate basis. All debts of the Cooperative, both secured and unsecured, had priority over patronage refund credits. Such credits were not transferable.'

"The bylaws of the cooperative provided for a revolving capital fund to be evidenced by 'revolving capital certificates and the amount to be evidenced by credits to patrons in the capital reserve accounts for that year.' The bylaws further provided with respect to these:

"'All such amounts shall have the same status as though they had been paid to the patrons in cash in pursuance of a legal obligation to do so and the patrons had then furnished corresponding amounts for capital for the association. In the event the association suffers a loss in any year, the Board of Directors shall prescribe the basis on which the capital contributions of patrons shall be reduced on account of any such loss, so that it will be borne by the patrons on as equitable a basis as the Board of directors finds practicable, but such losses shall first be charged against the capital reserve accounts. All capital furnished by deductions or otherwise under specific contracts with patrons shall be evidenced by revolving capital reserve accounts of the association, and such revolving capital certificates and credits shall be subject in all respects to the provisions of these bylaws regarding such certificates and credits. * * *

"'Section 3. Revolving the Capital Fund. In order to further the cooperative character of this cooperative, the association shall revolve its capital (other than that evidenced by preferred stock and common stock carrying voting rights), however, it may be evidenced, from time to time, as funds are determined by the Board of Directors to be available for that purpose, but, except as herein provided, the capital that is retired in a given year, in whole or on a pro rata basis, shall be the oldest outstanding and unexhausted capital of the association. The directors shall pay off the Revolving Capital Certificates and capital reserve credits for the same year simultaneously or consecutively.

* * *

> "'Section 5. Losses. In the event the association suffers a loss in any year, the Board of Directors shall prescribe the basis on which the capital furnished by patrons shall be reduced on account of any such loss, so that it will be borne by the patrons on as equitable a basis as the Board of Directors finds practicable.'

"The evidence shows that in the ten year period between 1942 and 1952 the cooperative had built up $2,098,000 of these credits and had paid on them $8,056.12, which represented the payment in 1945 of the credits for 1942. In 1952 it called $92,680 of the credits for the year 1943, which were then nine years old. At the time when taxpayer received his credit, therefore, the cooperative had paid only about 5% of the credits, and under the bylaws credits for nine years would have priority of payment over the credit allotted taxpayer.

"On April 1, 1953, the cooperative wrote taxpayer a letter reading in part as follows:

> "'Based on the tonnage which you delivered as an individual grower to the plant during the year, you are entitled to a patronage refund credit of $6,781.94, which has been entered to the credit of your account as of this date. Please keep this letter for your own personal record, together with previous information sent to you, in order that your records will be complete. "This credit will be redeemed in cash at a later date and you will be notified when it is payable. Do not present it for payment until you are notified."'

"The credit thus granted taxpayer was not saleable, had no market value and taxpayer was unable to borrow money on it although attempt was made to do so.

"On these facts, as to which there is no dispute, we think it clear that taxpayer did not receive income as the result of the credit allotted, nor did it become entitled to receive anything which could properly be accrued as income. All that it received was a conditional credit on the books of the cooperative, a credit which was subject to diminution if the cooperative sustained losses, was subordinated to the payment of the cooperative's debts, was not to be paid until all prior holders of credits over a nine year period had been paid in full and was to be paid only if and when the directors of the cooperative should so decide. It is argued that under implied agreement arising out of the provisions of the bylaws taxpayer in effect

> received in cash the amount of the credit and reinvested it in the revolving fund of the cooperative; but this is simply to exalt fiction and ignore reality. As said by this Court in Home Furniture Co. v. Com'r 4 Cir. 168 F. 2d 312, 313, 'Economic realities, not legal formalities, determine tax consequences.' The truth is that the taxpayer never received anything except a credit on the cooperative's books which did not entitle it to receive anything except upon the conditions above enumerated, and only then if the directors of the cooperative should so determine. . . ."

The Court then quotes from the decisions of the Tax Court in B. A. Carpenter, 20 T.C. 603, at 608, and of the Appeals Court in the same case, Commissioner v. Carpenter, 5th Cir., 219 F. 2d 635, at 636. It also cites Caswell's Estate v. Commissioner, 9 Cir., 211 F. 2d 693; Moe v. Earle, 9th Cir., 226 F. 2d 583, cert. den. 350 U.S. 1013; and William A. Joplin, Jr., 17 T.C. 1526. It then continues:

> "While in the cases cited, the taxpayers were reporting on the cash basis, we think the principles upon which the decisions are based would prevent the credits being taxed as income if they had been on the accrual basis. North American Oil Co. v. Burnet 286 U.S. 417, 423-424. As said by the Tax Court in San Francisco Stevedoring Company v. Com'r 8 T.C. 222, 225-226:
>
> > "'A taxpayer, using an accrual method of accounting, must accrue an item in the year in which the taxpayer acquires a fixed and unconditional right to receive the amount, even though actual payment is to be deferred. There must be no contingency or unreasonable uncertainty qualifying the payment or receipt. Income does not accrue to a taxpayer using an accrual method until there arises in him a fixed or unconditional right to receive it. United States v. Anderson, 269 U.S. 422; Continental Tie & Lumber Co. v. United States 286 U.S. 290; Spring City Foundry Co. v. Commissioner 292 U.S. 182; United States v. Safety Car Heating & Lighting Co. 297 U.S. 88; Putnam's Estate v. Commissioner 324 U.S. 393; H. Liebes & Co. v. Commissioner 90 F. 2d 932; Mertens Law of Federal Income Taxation sec. 12.60.' (Italics supplied).'"

The Court then cites and quotes from Fountain City Co-op Creamery Association v. Commissioner, 7th Cir., 172 F. 2d 666, at 668, affirming 9 T.C. 1077, Farmers Grain Dealers Ass'n v. Commissioner, 116 F. Supp. 685, 688, appeal dismissed by consent 214 F. 2d 350, and Johnson v. Commissioner, 4th Cir., 233 F. 2d 952, at 956. In the

last mentioned case it was held that sums withheld by a finance company from amounts due taxpayer and credited to him on a reserve account were not taxable to him in the year in which they were credited until the right to receive them became fixed, even though taxpayer was on the accrual basis.

The Court then continues:

> "The cases upon which the Tax Court based its decision, Harbor Plywood Corporation 14 T.C. 158, aff'd 187 F. 2d 734, and George Bradshaw 14 T.C. 162 are distinguishable on the facts, in that they involved no such contingencies and uncertainties as are here involved. In one case, the only contingency related to renegotiation of a government contract. In the other, notes were issued and there was nothing to show that they were not worth face value. In both cases there was uncertainty as to when cash would be received on the promises of the cooperative but no contingency as to the right to receive or as to the amount.
>
> "The Commissioner places great weight on the argument that by 26 USC 101 (12) (B) an exempt cooperative is permitted to deduct from gross income patronage dividends such as are here involved and that there was testimony before committees of Congress to the effect that these would be returned for taxation by the recipients. The answer is that Congress while granting the right to the deduction by the cooperative left the matter of taxing the dividends to the recipients to be dealt with by existing law, making no change whatever with regard thereto, with the result that cash basis taxpayers will report as income patronage dividends such as are here involved in the year when payment thereof is received and accrual basis taxpayers will report them as income for the year in which the right to receive payment becomes reasonably definite and certain.
>
> "The Commissioner relies upon a regulation that he has adopted which accords with his contention in this case (Treasury Regulations 118 sec. 39.22(a)23); but to the extent that this regulation is contrary to existing law or attempts to tax as income what is not income under law, it is, of course, void and of no effect. To require the inclusion in income of contingent credits such as are here involved, would be to require the patrons of cooperatives to pay tax upon income which they have not received, over which they have been given no control and which they may never receive. Apart from the question of constitutionality of such a requirement, which would be a serious one, it is a safe assumption that Congress never intended to impose upon the patrons of cooperatives the hardship and burden which the taxability of these contingent credits would involve."

BUSINESS BAD DEBT DEDUCTIONS - FARMERS - LOSSES NOT INCIDENT TO FARMING ENTERPRISE

(Gulledge v. Commissioner, ____ F. 2d _____, 26 L.W. 2244 (1957))

The question has arisen occasionally whether a farmer's unrecovered advances to a cooperative of which he is a member and which he helped establish to process and sell his crop may be taken as a business bad debt deduction incident to his farming business. Apparently there has not, up to now, been any reported decision on the point.

Under the law and regulations, whether a bad debt is deductible as a business bad debt is to be determined by the relationship which the loss bears to the trade or business. For example, in J. T. Dorminey, 26 T.C. 940, it was held that a taxpayer engaged in the produce business who had a market for 2 carloads of bananas a week and who loaned substantial sums to a corporation in which he was principal stockholder and which he helped form to bring bananas into the country because they were otherwise not obtainable for economic reasons, could deduct the loss on these loans as a business bad debt deduction of the produce business. The Tax Court held that the loss was incidental to and proximately related to the taxpayer's produce business.

It was thought that by analogy, it could be strongly argued that a farmer member of a cooperative would have a farm business bad debt deduction for any unrecovered advances to his cooperative. However, the decision in the Gulledge case throws considerable doubt on the validity of that argument, even though the Gulledge case does not involve a cooperative but a profit corporation and may have other possible distinctions on the facts.

During the taxable years 1951 and 1952 and for many years prior thereto, petitioner Edmund Thomas Gulledge, Sr., was engaged in the business of farming. He devoted a part of his land to the raising of peanuts. In 1946, he and three other individuals organized a corporation to engage in the business of shelling and marketing peanuts. During the years 1949 to 1952, inclusive, he advanced a total of $46,367.04 to the corporation. On these facts, the Tax Court held that the advances were loans to the corporation rather than capital contributions. It held, further, that a part of the loans became entirely worthless in 1951 and the remainder was entirely worthless in 1952 when made pursuant to the agreement of November 29, 1951; that the worthless debts were deductible as non-business rather than business bad debts; and that the worthless debts were not deductible under either section 23 (a)(1) or (e)(2), I.R.C. 1939.

An excerpt from the Court's opinion follows:

"Section 29.23(k)(6) of Regulations 111 applicable to 1951, and the corresponding section of Regulations 118 applicable to 1952, which are substantially identical, provide that the character of a non-business bad debt is to be determined by the relation which the loss bears to the trade or business of the taxpayer. It is true that the taxpayer and the other stockholders were induced to contribute to the capital of the corporation in the hope that the establishment of a peanut mill in their neighborhood would enable them to secure a better price for their peanuts, and hence it may be said in a broad sense that the business of the farmers and the business of the corporation were related.

"It does not follow, however, that the business of the corporation was incidental to the business of the taxpayer and that the loss of the money loaned by him to the corporation was incurred in the operation of his farms. The two businesses were separate and distinct. The taxpayer owned the one directly while in the other he had merely the interest of a stockholder. The corporation was not merely a department of the business of his farm. Not only was the corporation a separate business and taxable entity, but it was set up to purchase and process not only the taxpayer's crop but also the peanuts of all the other growers in the locality; and it was formed in the expectation that it would return a profit to its founders.

"All of these circumstances call for a finding of fact, and it is well established that the trier of fact, in this case the Tax Court, must determine, when a debt due to a taxpayer has become worthless, whether or not the loss was incurred in the course of the taxpayer's trade or business. Undoubtedly there is substantial evidence, in the pending case to support the finding that the corporation's business was not an incident to the business of farming but was an independent enterprise. See Putnam v. Commissioner, 352 U.S. 82, 25 LW 4021; Wheeler v. Commissioner, 2 Cir. 241 F. 2d 883; Pokress v. Commissioner, 5 Cir., 234 F. 2d 146. The decisions on which the taxpayer relies to support his contention, to wit, Tony Martin, 25 T.C. 24 LW 2198; J. T. Dorminey, 26 T.C. 940; Giblin v. Commissioner, 5 Cir., 227 F. 2d 692, 24 LW 2232, do not require a different conclusion in view of their differing facts."

MARKETING CONTRACT - INTERPRETATION - EFFECT OF BREACH

(Evans v. Yakima Valley Grape Growers Association, 313 P. 2d 373)

In this case Evans brought suit against the association on three causes of action: (1) for commissions under an oral contract of employment, (2) for sales proceeds alleged to be due under a written contract to sell grapes to the defendant association, and (3) for the immediate payment of redeemable certificates of indebtedness issued by the defendant. The lower Court entered judgment for the plaintiff on all three counts. The Supreme Court of Washington reversed the judgment on the first cause but affirmed the judgments on the second and third causes.

On the first cause, the Supreme Court held that even though minutes of directors' meeting of the association and an approved audit reflected that the association owed Evans $3,400.40 as balance due him as commissions while he served as manager, the contract of employment was oral. Since the suit had not been brought in proper time, the first cause was held barred by the statute of limitations.

The following excerpt from the opinion shows the facts and the Court's reasons for affirming the judgments on the second and third causes:

> "The respondent's second cause of action is upon a written contract, under the terms of which he agreed to sell his grape crops to the appellant for ten years. It provided:
>
> > "'3--That the Grower agrees to accept and the Association agrees to return in cash the general market price, same as other juice factories and processors pay.'
>
> "Respondent delivered his 1948 crop in the amount of 84,373 pounds, for which he was paid at the rate of twenty dollars a ton. The market price was forty dollars a ton. He was given judgment for the balance owed in the amount of $843.73 with interest at six per cent.
>
> "The appellant's appeal on the second cause of action, with one exception, raises only questions of fact. The trial court's findings of fact are adverse to the appellant, and we find them to be supported by the record.
>
> "The appellant changed its bylaws so that the purchase price of grapes would be paid for out of a crop pool of all the members, instead of by the above contract method. The court correctly

found that the respondent, who did not vote for the amendment, was not bound by it and could, therefore, enforce his rights under his contract. 8 Fletcher Cyclopedia, Corporations (Perm. ed.) 720, sec. 4188.

"The appellant contends that the respondent waived his contract rights and is estopped to assert them because, as manager of the association, he advised other members to vote for the change in the bylaws here in question. This contention is unsound. Such an act is without legal significance.

"The judgment on the second cause of action is affirmed.

"The respondent's third cause of action is predicated upon what the appellant designates as redeemable certificates of indebtedness. These written instruments are the unqualified promises of the appellant to pay the amount shown on the face thereof in ten years to the party named therein. They were given in payment for grapes purchased from members of the appellant and are transferable upon its books. The respondent is the owner of a number of these certificates, which he obtained either from the sale of his own grapes or by assignment from other members.

"A chain reaction here comes into play. When the appellant refused to pay the respondent for his 1948 crop and breached its contract, as set out in the second cause of action, the respondent, acting upon the breach, refused to deliver subsequent crops of grapes. This he had a right to do, but the appellant treated his refusal as a breach of his contract and, acting thereon, repudiated its obligation on the redeemable certificates of indebtedness owned by the respondent. This the appellant had no right to do.

"Accordingly, respondent brought his third cause of action for the immediate payment of the certificates by reason of appellant's repudiation of them, which he had a right to do and for which the court gave him judgment.

"Since only questions concerning these facts as found by the court are raised upon the appeal of the the third cause of action, and we find them to be supported by the record, the court was correct in granting judgment for respondent and denying appellant any relief on its cross-complaint."

COOPERATIVE REVOLVING FUND CERTIFICATES HELD CAPITAL, NOT EVIDENCES OF DEBT

(Pasco Packing Association v. United States; Pasco Growers Cooperative v. United States, U.S.D.C. So. D. Fla.,___ F. Supp.___, CCH U.S.T.C. Advance Sheets, par. 9849, decided June 23, 1957)

In these cases, which were tried together on a single narrow issue, the district court held that on the facts the revolving fund certificates issued by these cooperative corporations (which, it was agreed, were in partial liquidation) were not "debts" but represented contributions to the capital of the cooperatives. Accordingly, it was held that no gain or loss for tax purposes resulted from their cancellation or redemption in partial liquidation.

The Order of the District Judge is given in part below:

> "Each of these cooperatives had outstanding at the time of the partial liquidation on January 18, 1954, certain 'retain certificates' (or 'revolving fund certificates' of a substantially similar character). Approximately one-half of such outstanding retain certificates of each corporation was redeemed or cancelled in the partial liquidation.
>
> "The Government claims that these 'retain certificates' represented debts of the cooperatives, and that the extinquishment of them through transfer of property to their holders resulted in certain capital gains to the cooperatives. The taxpayers claim that the 'retain certificates' represented capital contributions to the cooperatives, and as the risk capital of the cooperatives they were not debts, and therefore no gain or loss resulted from their cancellation or redemption in the partial liquidation.
>
> "Thus the parties have agreed that a single, narrow issue is involved: Were these retain certificates 'debts' of the cooperatives, or did they represent its invested capital. (The taxpayers insist that, should the Court decide that the retain certificates are 'debts', then it must decide the amount of such 'debts'. As will be seen, the Court does not reach that question.)
>
> "The parties have submitted proposed findings, and they are in substantial agreement on the controlling facts.
>
> "On the character of the retain certificates I make the following:

"I. Findings of Fact
A. Pasco Packing Association

"(1) The plaintiff was organized on June 30, 1936, as a membership cooperative without a capital stock.

"(2) The plaintiff's by-laws authorized its Board of Directors to make retain charges against its members 'for the purpose of paying off and retiring the cost of the erection and equipping of a packing house and for all other corporate functions,' and to make other similar annual levies for the proper operation of the business of the corporation, issuing retain certificates 'for the various amounts retained for the various purposes which shall have entered into the capital investment of this corporation.'

"(3) Pursuant to its authority, the Board of Directors issued retain certificates to its members in the total amount of $2,079,900.68. All such retain certificates were issued for 1945 and prior years. At the time of their issuance and until 1950 there was no other capital invested in this cooperative corporation.

"(4) The retain certificates issued by the plaintiff had no maturity date, bore no interest, and were in the following form:

"'* * * This certifies that ..... of ..... is entitled to receive the amount of .....Dollars from the PASCO PACKING ASSOCIATION on account of deductions for revolving-fund purposes as provided in the by-laws thereof, subject to the following conditions:

"'1. This and other revolving-fund certificates of the same series are retirable in the sole discretion of the Board of Directors, either fully or on a pro rata basis, but certificates issued in prior years shall be entitled to priority in retirement except in liquidation.

"'2. This and other certificates shall be junior and subordinate to all other debts of the association, both secured and unsecured. Upon the winding up or liquidation of the association in any manner, after full payment to all its other creditors, all revolving-fund certificates shall then be retired in full or on a pro rata basis, without priority.'

"None of these retain certificates was ever retired prior to the partial liquidation of the plaintiff in 1954.

"(5) Losses of the association, from any cause whatsoever, could, in the discretion of the Board of Directors, be charged against the retain certificates or to current operating expenses. Substantial amounts of losses were actually so charged.

"(6) In 1947, the plaintiff sold all of its property, other than accounts receivable, to Pasco Packing Co., a Florida corporation, for cash, the cancellation of certain indebtedness, and $1,589,000 face amount of the purchaser's 20 year debenture bonds. In 1948, these debentures were exchanged by the plaintiff for 15,890 shares of Pasco Packing Co. common stock at $100 per share.

"(7) In 1949 plaintiff filed amended Articles of Incorporation under which it was authorized to issue 1,000 shares of no par value stock. All of the authorized shares were issued for $1.00 per share in cash, for a total of $1,000. No other securities besides these shares and the retain certificates were issued, the Liabilities and Capital accounts of the association being stated as of January 18, 1954, as follows:

Liabilities and Capital

Claims Payable	$ 266,502.84
Retain Certificates	2,079,900.68
Common Capital Stock--1,000 shares	1,000.00
Deficit:	
Losses subsequent to issuance of retain certificates	815,915.73
TOTAL	$1,531,487.79

"(8) The retain certificates when issued represented the risk capital of the association, and no subsequent corporate event changed the character of those certificates"

/The Court then enters substantially similar findings of fact on Pasco Growers Cooperative. These are omitted here./

"II. Conclusions of Law

"The retain certificates of Pasco Packing Association and Pasco Growers Cooperative were not the debts of those corporations, but represented risk or ownership capital invested in them by the members.

"These certificates had no fixed maturity, they expressed no promise to pay, they had no fixed principal sum, they bore no

interest, they were subordinate to the debts of creditors, and there was obviously no right to force payment of any amount as a debt in the event of default. As a matter of fact, they are so barren of any of the recognized legal characteristics of debt, that it is impossible to see how they could ever be in default.

"The parties hereto have agreed that they will endeavor to arrive at an appropriate calculation of tax and interest to be refunded in each case. It is, therefore,

"ORDERED, that such stipulations be filed with the Court within thirty (30) days of the date of this Order, or reason therefor shown. On the filing of such stipulations, the Clerk is directed forthwith to enter judgment for the plaintiff in each case and against the defendant in the amounts so stipulated to be refunded, together with interest thereon at six per cent (6%) from dates of payment, as provided by law."

EXPULSION - RIGHT TO RECOVER PUNITIVE DAMAGES FOR "HUMILIATION" OR ANY OTHER SUM

(Gullo v. Veterans Cooperative Housing Association, D.C. Cir., 247 F. 2d 573)

In this case, Gullo had joined the defendant association by paying the prescribed membership fee and had acquired thereby the right to perpetual use of an apartment in a project known as Naylor Gardens. This original perpetual use agreement was superseded about two years later by an instrument known as a "mutual ownership contract." In accordance with its terms, Gullo agreed to pay the Association as the purchase price for the perpetual use $7,350 "on terms and with interest" as in the contract provided. Plaintiff defaulted on a payment, whereupon the association terminated the contract and elected to purchase the plaintiff's perpetual use, all as provided in the contract. On these facts, the majority of the Court held that plaintiff was entitled to no recovery because of alleged humiliation. Circuit Judge Danaher dissented in part, stating that he thought "the peculiar facts present a case as to which equity should afford relief." He favored sending the case back so Gullo, in effect, would have been awarded his pro rata share in the association's equity in 1954, rather than just the "repurchase price" as fixed by the contract.

The following excerpt from the opinion gives further facts and the Court's conclusions:

"Gullo defaulted in the April 1, 1954, payment, and on April 12, 1954, commenced this action. The mutual

ownership contract provided that in the event of default by the member as to any of the payments or charges required to be made, the Association might terminate the contract upon ten days' written notice. Acting pursuant thereto the Association's Board of Directors by resolution of April 23, 1954, exercised its authority to terminate the contract. Furthermore, the Association exercised its election, permitted by the contract, to purchase Gullo's perpetual use. The reasonable market value of the perpetual use, calculated as the contract provided, was $9,000. After deduction of the unpaid balance of the purchase price and the estimated cost of maintenance, repairs, painting and decorating, and in furtherance of the Board's resolution to purchase Gullo's perpetual use for an amount 'equal to the current value of such perpetual use,' the Association tendered to Gullo its check for the balance, computed to be $3,781.41. Gullo received but has never cashed the check.

"Careful consideration of the stipulation of facts, the pleadings, the affidavits and the exhibits, has convinced us that the Association was authorized to take each of the steps thus far noted. We are satisfied that the District Court correctly concluded that no genuine issue of material fact existed with respect to the valuation of the perpetual use and that the sum of $3,781.41 was properly found to be due to Gullo as provided in the mutual ownership contract.

"Moreover, we are satisfied that Gullo is entitled to no recovery on account of the 'humiliation' of which he complains, which stemmed from the circulation of a petition by and among certain other members of the Association and which called for the expulsion of Gullo. No facts have been pleaded and none otherwise exhibited showing, or tending to show, that the circulation of the petition was the act of the Association. Indeed, the contrary appears. On no theory of Gullo's claim deducible from this record is there a basis for punitive damages. To the extent that Gullo predicates this aspect of his claim upon his eviction, there can be no question that Gullo's April 1, 1954, default in the payments then due was the result of his own decision. His continued default was a matter of reasoned, if ill-advised, personal choice. The steps thereafter taken by the Association to gain possession of the perpetual use were authorized by the contract and strictly in accordance with its terms. We are all in accord that on the aspect of the case so far considered, no error was shown.

"My colleagues say that Gullo is entitled to no additional relief and that the circumstances resulting in the discharge of his right under the mutual ownership contract likewise worked a termination of his interest in the equity assets of the Association. They would affirm, without more."

UNIFORM GRAIN STORAGE AGREEMENT - INTERPRETATION AS TO METHOD OF SAMPLING TO BE EMPLOYED

(Elbo Lake Coop. Grain Co. v. C.C.C., 144 F. Supp. 54; Farmers Coop. Elevator Co. v. C.C.C., 144 F. Supp. 65)

These cases involved actions by grain warehousemen who alleged that the quality and quantity of grain of Commodity Credit Corporation received, stored, and loaded out by each warehouseman should have been determined by grade and dockage established by so-called probe method of sampling grain while still loaded in box cars instead of crediting warehousemen with grade and dockage under either the belt run or bin run methods of sampling.

The courts pointed out that under the Uniform Grain Storage Agreement it is provided that if official weights or grades are not available at warehouse locations, the class, grade, quality and quantity of all grain loaded out is to be determined upon the basis of official weights and/or grades at destination or at inspection point shown on shipping order. Accordingly, both courts held that in the absence of official weights and grades at warehouse locations and any designation of an intermediate inspection point in the shipping orders, class, grade, quality, and quantity of grain involved was properly determined when grain reached the end of its journey and was to be unloaded. Since the bin or belt run methods were utilized at point of destination, grain was properly subjected to such test.

EXEMPTION UNDER 501(c)(12), IRC 1954, AS "LIKE ORGANIZATION"

(Rev. Rul. 57-420; I.R.B. 57-38, p. 13)

In the cited ruling, IRS holds that a nonprofit organization which provides a two-way radio system for its members on a mutual or cooperative basis qualifies for exemption under section 501(c)(12) of the Internal Revenue Code of 1954, provided 85 percent of more of its income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

The ruling reads as follows:

> "Advice has been requested whether a nonprofit organization which provides and maintains a two-way radio system for its members qualifies for exemption from Federal income tax under section 501(c)(12) of the Internal Revenue Code of 1954.
>
> "The instant organization was formed for the exclusive purpose of providing and maintaining a two-way radio system for its members. All members are required to lease or purchase their own radio equipment, and all mobile units must comply with the minimum specifications of the Federal Communications Commission. Each unit is equipped with a selective calling system which operates in conjunction with a centrally located base station. The association is operated for the mutual benefit of its members and without profit. Contributions to capital and operating expenses are accepted only on a cost-sharing basis and all costs are prorated on an equitable basis among members receiving services. Any profits after authorized charges, expenses, and costs are refunded to members on a unit basis at the close of the fiscal year.
>
> "Section 501(c)(12) of the Internal Revenue Code of 1954, which corresponds to section 101(10) of the Internal Revenue Code of 1939, describes certain organizations exempt from Federal income tax under section 501(a) and provides in part as follows:
>
> > "(12) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.
>
> "In order for an organization to qualify for exemption from Federal income tax under section 501(c)(12) of the Code, it must be a mutual or cooperative organization and 85 percent or more of its income must consist of amounts collected from

members for the sole purpose of meeting losses and expenses. The instant organization meets these requirements.

"In Sunset Scavenger Company v. Commissioner, 84 Fed. (2d) 453, Ct. D. 1190, C.B. 1937-1, 202, it was held that a corporation furnishing scavenger service did not qualify for exemption from income tax under section 101(12) of the 1939 Code (now section 521 of the 1954 Code), which exempts farmers, fruit growers or like associations organized and operated on a cooperative basis to market agricultural products of its members or to purchase supplies and equipment for its members. The court stated that under the principle of ejusdem generis, the words 'like associations' are limited by the words 'farmers' and 'fruit growers' engaged in marketing agricultural products or purchasing supplies and equipment for those so engaged.

"Although this decision was based on a different section of the Code wherein the groups referred to were similar, whereas the three groups referred to in the section under discussion are dissimilar except in their method of operation, the rationale of the Sunset Scavenger Company case may be helpful in determining whether a particular organization comes within section 501(c)(12). For example, the two-way radio association here is similar to a mutual or cooperative telephone company in that a two-way radio communication system on a mutual basis is an organization whose purpose is similar in nature to a mutual telephone company.

"Accordingly, it is held that a nonprofit organization which provides and maintains a two-way radio system for its members on a mutual or cooperative basis qualifies for exemption from Federal income tax under section 501(c)(12) of the Internal Revenue Code of 1954 as a 'like organization,' provided 85 percent or more of its income consists of amounts collected from members for the sole purpose of meeting losses and expenses."

1957
CUMULATIVE INDEX
LEGAL SERIES NOS. 1 - 3, Inc.

1957
TABLE OF CASES REPORTED

INTERNAL REVENUE SERVICE RULINGS